

**TITLE 2. ADMINISTRATION
DIVISION 7. SECRETARY OF STATE
NOTICE OF PROPOSED RULEMAKING**

Notice is hereby given that the Secretary of State intends to adopt the proposed regulations described below after considering all comments regarding the proposed action. The Secretary of State adopted the proposed regulations as emergency regulations on December 12, 2005, and then readopted the emergency regulations on April 10, 2006, August 15, 2006, and December 13, 2006. The emergency regulatory action is scheduled to expire on April 12, 2007, unless the Office of Administrative Law receives a certificate of compliance from the Secretary of State by April 12, 2006, or the emergency regulations are readopted.

PROPOSED REGULATORY ACTION

The Secretary of State proposes to adopt Sections 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.71, 20108.75, and 20108.80 of Chapter 2 of Division 7 of Title 2 of the California Code of Regulations.

PUBLIC HEARING

The Secretary of State will hold a public hearing pursuant to Section 11346.8 of the Government Code on April 2, 2007, at the Office of the Secretary of State, Auditorium, 1500 11th Street, Sacramento, California, 95814, at 10:00 a.m.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes at 5:00 p.m. on April 2, 2007. Only written comments received at the office of the Secretary of State by that time shall be considered. Submit written comments to the contact person listed below.

AUTHORITY AND REFERENCE

Authority: Section 12172.5, Government Code and Section 10, Elections Code.

Reference: Help America Vote Act of 2002, Pub.L. No. 107-252, § 303(a) (October 29, 2002) 116 Stat. 1666, 42 USC § 15483; Sections 2100, 2101, 2102, 2150, 2153, 2168, 2189, 2193, 2201, 2203, 2205, 2206, 2212, 2220, 2221, 2223, 2224, 2225, 2226, 3400, 3500, 12260, 15372 and 15375, Elections Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

HAVA was drafted following the controversial 2000 presidential election, and was signed into law by the President on October 29, 2002. HAVA provides federal funding to states conditioned upon certification of intent and submission of a plan to implement certain requirements, including the modernization of voting systems, elections official and poll worker training, voter education, accessibility to voting systems by individuals with disabilities or with alternative language needs, establishment of a statewide voter registration database, a complaint procedure, and provisional balloting.

Section 15483(a) of HAVA requires that each state having voter registration requirements shall, through the chief state elections official, implement a single, uniform, official, centralized, interactive computerized statewide voter registration list. The list will be defined, maintained and administered at the state level, will contain the name and registration information of every legally registered voter in the state, and will assign a unique identifier to each legally registered voter in the state. (HAVA, 42 U.S.C. § 15483(a)(1).)

The proposed regulations will establish standards and procedures for processing, transmitting, and maintaining voter registration records in compliance with the requirements of Section 15483(a). The proposed regulations include provisions which will:

- Establish the computerized statewide registration list as the state's official voter registration list for federal elections.
- Establish data exchange and data maintenance requirements.
- Describe the requirements of the elections management system and indicate the voter information to be included in that system.
- State the requirements for processing new voter registration applications.
- Set forth requirements and procedures to be utilized in updating, changing or canceling a voter's registration record.
- Provide guidance for comparing registration records with state death and felony status records.
- Establish requirements concerning duplicate registration records.
- Describe procedures for verifying voter identity and issuing unique voter identification numbers.

In January 2005, the Secretary of State began communications with the U.S. Department of Justice (Department) seeking guidance concerning California's proposed plan for compliance with the statewide voter registration list requirements of HAVA. The Secretary of State and the Department were involved in extensive discussions aimed at achieving California's interim compliance with these requirements by January 1, 2006, and on November 2, 2005, the Secretary of State and the Department entered into an agreement which provided that the Secretary would immediately complete development and begin implementation of an interim plan. That plan utilized an enhanced Calvoter statewide voter registration system, pending development and completion of the new VoteCal statewide voter registration system. Included with the agreement were draft regulations designed to establish standards and procedures for processing,

transmitting, and maintaining voter registration records in conformance with HAVA. Pursuant to the signed agreement, the Secretary immediately began the process required by state law for promulgation and implementation of those draft regulations, which were adopted and became operative as emergency regulations on December 12, 2005, and subsequently readopted on April 10, 2006, August 15, 2006, and December 13, 2006.

The emergency regulations implemented the November 2, 2005, agreement between the Secretary of State and the Department to ensure compliance with the January 1, 2006, deadline to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list in accordance with HAVA, thus avoiding possible legal action by the Department, and the potential loss of millions of dollars of federal funding provided to the state to fulfill this requirement of federal law. Since adoption of the regulations, the Secretary of State has continued to fulfill its commitment to implement the database, working with both the counties and the Department to ensure compliance with HAVA, the regulations, and a new state law that was chaptered prior to the effective date of the regulations, but which took effect January 1, 2006. (See Section 1 of Senate Bill 1016 (Bowen), Chapter 726, Statutes of 2005.)

The first statewide election for federal office following the operative date of these regulations was the primary election held June 6, 2006. As state and local elections officials prepared for the November 7, 2006, General Election, the evaluation of the effectiveness of the emergency regulations continued. Although the Secretary of State had originally intended to promulgate permanent regulations prior to the expiration of the emergency regulations adopted in August 2006, it was determined that the Secretary of State needed a full election cycle to have the complete data necessary to promulgate permanent regulations. Based on communications received from counties and individuals concerning the regulations, the Secretary of State concluded that the need for changes or additions to the regulations would only become apparent once their functionality has been observed in the course of a complete election cycle, including the November 7, 2006, General Election. Accordingly, the Secretary of State determined that it was in the best interests of the voters of this state to readopt the emergency regulations and wait until after the November 7, 2006, General Election to begin the process of revising the regulations and implementing them on a permanent basis.

Following the election of a new Secretary of State, who assumed office on January 8, 2007, the Secretary of State's Office determined that it was again necessary to readopt the emergency regulations to permit the new Secretary to propose additional changes or requirements not presently covered by the current version of the regulations. Readoption of the existing emergency regulations was necessary because voter registration is a continuous process and counties are constantly processing voter registration applications that must be validated through the state system based on these standards; thus, it was in the state's best interest to avoid a time period during which no consistent statewide standards would be in effect. Once the new Secretary took office, the existing emergency regulations were promptly reviewed and revised, and the process begun to expeditiously adopt them as permanent regulations.

AVAILABILITY OF TEXT IN PLAIN ENGLISH

The text of the proposed regulations is available in plain English from the contact person listed below.

DETERMINATIONS REGARDING THE REGULATIONS

The Secretary of State has made the following determinations:

Mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: The Secretary of State has determined that the proposed regulations do impose a mandate on the counties, with the state to reimburse the counties using federal HAVA funds.

Cost or savings to any state agency: The Secretary of State has determined that the federally mandated HAVA statewide voter registration database and resulting proposed regulations will impose an additional cost to the Secretary of State in the amount of \$2.5 million from its allocation of federal HAVA funds.

Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: The Secretary of State has determined that the proposed regulations will impose a cost to the counties in the amount of approximately \$2.5 million, which is required to be reimbursed by the state using federal HAVA funds.

Other non-discretionary cost or savings imposed upon local agencies: The Secretary of State has determined that no such costs or savings will be imposed in the immediate future; however, there could potentially be unknown increased costs and unknown savings from operation and maintenance of the voter registration system.

Cost or savings in federal funding to the state: HAVA provides for federal funding to states conditioned upon its planned implementation of several mandates, including implementation of a statewide voter registration database. The proposed regulations are necessary to satisfy federal mandates regarding implementation of the database, and the state has received HAVA funds to comply with these mandates.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Secretary of State has made an initial determination that the proposed regulations do not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are a product of federal mandates regarding voter registration outlined in HAVA.

Cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The Secretary of State is not aware of any

cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these proposed regulations will not do any of the following: (1) create or eliminate jobs within California; (2) create new business or eliminate business within California; or, (3) affect the expansion of business currently doing business in California.

Significant effect on housing costs: The proposed regulations relate to a statewide voter database and have no significant effect on housing costs.

BUSINESS REPORTING REQUIREMENT

The business reporting requirement is not applicable to the regulations as the subject matter is the statewide voter database.

SMALL BUSINESS DETERMINATION

The Secretary of State has determined that the proposed regulations do not affect small business. The only businesses impacted by this regulation are the five (5) election management system vendors doing business in the State of California, none of which are small businesses within the meaning of Government Code section 11342.610. No small business within the meaning of section 11342.610 is legally required to comply with the regulation; is legally required to enforce the regulation; derives a benefit from the enforcement of the regulation; or incurs a detriment from the enforcement of the regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with paragraph (13) of subdivision (a) of Section 11346.5 of the Government Code, the Secretary of State has determined that no reasonable alternative considered by the Secretary of State, or that has otherwise been identified and brought to the attention of the Secretary of State, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Secretary of State shall have the entire rulemaking file available for inspection and copying throughout the rulemaking process. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice published in the Notice Register, the text of the proposed regulations, and the initial statement of reasons. For further information regarding inspection of the rulemaking file, contact Judith A. Carlson, Elections Counsel, at (916) 651-6971, or Michael J. Kanotz, Elections Counsel, the designated back-up contact, at (916) 653-1690. Copies of the rulemaking file may be obtained at <http://www.sos.ca.gov/elections/elections.htm> or by contacting Judith A. Carlson, Elections

Counsel, who is listed below as the contact person, or Michael J. Kanotz, Elections Counsel, who is listed below as the designated back-up contact person.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the close of the public comment period, the Secretary of State may adopt the proposed regulations substantially as described in this notice. If the Secretary of State makes modifications which are sufficiently related to the originally proposed text, the modified text with changes clearly indicated shall be available to the public for at least 15 days before the Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the contact person or designated back-up contact person listed below. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available. Once the final statement of reasons is prepared in accordance with subdivision (a) of Section 11346.9 of the Government Code, copies may be obtained at <http://www.sos.ca.gov/elections/elections.htm> or by contacting Judith A. Carlson, Elections Counsel, who is listed below as the contact person, or Michael J. Kanotz, Elections Counsel, who is listed below as the designated back-up contact person.

CONTACT PERSON

Direct all inquiries and requests for copies of proposed text of the regulations, initial statement of reasons, modified text of regulations, if any, or other information upon which the rulemaking file is based to Judith A. Carlson, Elections Counsel, the designated contact person, or Michael J. Kanotz, Elections Counsel, the designated back-up contact person, at the Secretary of State's Office, Elections Division, 1500 11th Street, Sacramento, California, 95814.